

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) CUID Nos. HI0003 (Hawaii Kai)
TCI of Hawaii, Inc.)
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: February 26, 2002

Released: February 27, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 98-1746 ("Prior Order"),¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator") on October 5, 1998. Our Prior Order resolved a complaint filed against Operator's April 1, 1998 rate increase for its cable programming service tier (CPST). In this Order, we grant Operator's Petition in part and amend our Prior Order.

2. Under the Communications Act, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable.² The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),³ and our rules in effect at the time the referenced complaint was filed, required the Commission to review CPST rates upon the filing of a valid complaint by a local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁴ and our rules implementing the legislation ("Interim Rules"),⁵ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁶ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁷

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁸ Cable operators may justify quarterly rate increases based on the addition and deletion of

¹ In the Matter of TCI of Hawaii, Inc., DA 98-1746, 13 FCC Rcd 18466 (1998).

² 47 U.S.C. §543(c) (1996).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

⁶ See Section 76.956 of the Commission's rules 47 C.F.R. §76.956.

⁷ See Section 76.957 of the Commission's rules 47 C.F.R. §76.957.

⁸ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

channels, changes in certain external costs and inflation, by filing FCC Form 1210.⁹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹⁰ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹¹

4. In our Prior Order, we disallowed Operator's claim of \$0.40 for channel additions because our rules do not allow a CAPS method rate increase for channels added in 1998.¹² In its Petition, Operator argues that it added the two channels in issue to its CPST in December 1997. Due to a clerical error, Operator mistakenly indicated on its FCC Form 1240 that these channels were added in 1998. Operator provided documentation that the channels were added in 1997 and we find Operator's argument to be compelling. We will amend our Prior Order accordingly and increase Operator's maximum permitted rate ("MPR") from \$16.41 to \$16.81, effective April 1, 1998 through March 31, 1999. Because Operator's actual CPST rate of \$17.49 exceeds its revised MPR, we find Operator's actual CPST rate of \$17.49 to be unreasonable.

5. In our Prior Order, we noted that Operator was under an obligation to true-up its 1997 FCC Form 1240 adjustments in its 1998 FCC Form 1240.¹³ In its Petition, Operator claims that it is eligible to be treated as an unregulated system pursuant to the *Thirteenth Reconsideration Order*¹⁴ because the Commission found that its 1997 rates were reasonable.¹⁵ Operator argues that once its 1997 CPST rates were found to be reasonable, it was no longer regulated and should be relieved of its obligation to true-up its 1997 FCC Form 1240 adjustments in its 1998 FCC Form 1240. In the *Thirteenth Reconsideration Order*, the Commission decided to end regulatory review of an operator's entire rate structure if no prior complaints had been filed against the operator's CPST rates. The regulatory relief envisioned by the *Thirteenth Reconsideration Order*, the avoidance of filing multiple FCC forms to justify a CPST rate, is a moot point in this case because Operator has already submitted the required FCC forms in response to complaints filed against Operator's CPST rates beginning in 1994. Indeed, by definition, Operator is not eligible to be treated as an unregulated operator pursuant to the *Thirteenth Reconsideration Order*. The relief provided by the *Thirteenth Reconsideration Order* applies only in

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Section 76.922 (g) (3) of the Commission's rules, 47 C.F.R. § 76.922 (g) (3).

¹³ Prior Order at n. 13. We ordered Operator to take into account our FCC Form 1240 adjustments when performing the true-up calculation on its next FCC Form 1240. *Id.* at ¶ 9.

¹⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, MM Docket No. 92-266, 11 FCC Rcd 388 (1996) ("*Thirteenth Reconsideration Order*").

¹⁵ See *In the Matter of TCI of Hawaii, Inc.*, DA 97-2175, 13 FCC Rcd 7951 (1998). We previously resolved complaints filed against Operator's CPST rates between 1994 and 1996. See *In the Matter of TCI of Hawaii, Inc.*, DA 97-1050, 12 FCC Rcd 23319 (1997).

those cases where no prior complaints were filed against an operator.¹⁶ Therefore, we will deny that portion of Operator's Petition.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS GRANTED IN PART AND DENIED IN PART TO THE EXTENT INDICATED HEREIN.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that In the Matter of TCI of Hawaii, Inc., DA 98-1746, 13 FCC Rcd 18466 (1998) IS AMENDED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the CPST rate of \$17.49, charged by Operator in the community referenced above, effective April 1, 1998, IS UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$16.81 per month (plus franchise fees), plus interest to the date of the refund, for the period April 2, 1998 (the date of the first subscriber complaint) through March 31, 1999 or the day before Operator implemented the maximum permitted CPST rate of \$16.81, whichever date is earlier.

10. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated period, and shall within 30 days of the release of this Order, file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including interest and franchise fees), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

¹⁶ *Thirteenth Reconsideration Order* at ¶¶ 161, 164.